

MAR 25 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GHAZI ALMASHLEH, a/k/a Al Mashala,

Defendant - Appellant.

No. 06-50078

D.C. No. CR-00-01321-AHM-01

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Submitted March 18, 2008^{**}

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Ghazi Almashleh appeals from the district court's decision, following a limited remand under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc), that it would not have imposed a different sentence had it known

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

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that the Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

We conclude that the government has waived its right to enforce Almashleh's appeal waiver because the government failed to raise the argument during Almashleh's initial appeal. *See United States v. Garcia-Lopez*, 309 F.3d 1121, 1123 (9th Cir. 2002).

Almashleh's contention that his sentence is unreasonable because the district court misapplied the Sentencing Guidelines is not properly before this court because Almashleh failed to raise the issue in his brief prior to the *Ameline* remand. *See United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006); *cf. United States v. Thornton*, 511 F.3d 1221, 1227 (9th Cir. 2008) (recognizing that the appellant's sentencing issues were properly before the court on appeal from an *Ameline* remand only because the appellant raised the issues in his initial appeal to this court).

Almashleh's motion to expedite this appeal is denied as moot.

AFFIRMED.